

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| Sheila R. Breckenridge, L.P.N., | : |                             |
| Appellant-Appellant,            | : |                             |
| v.                              | : | No. 10AP-102                |
| Ohio State Board of Nursing,    | : | (C.P.C. No. 08CVF-10-14651) |
| Appellee-Appellee.              | : | (REGULAR CALENDAR)          |

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D E C I S I O N

Rendered on July 13, 2010

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*Sheila R. Breckenridge*, pro se.

*Richard Cordray*, Attorney General, and *Katherine J. Bockbrader*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶1} On April 20, 2005, appellant, Sheila R. Breckenridge, L.P.N., was found guilty, following a jury trial, of three counts of Medicaid fraud. Consequently, Breckenridge was charged by appellee, the Ohio State Board of Nursing ("Board"), with violating the Nurse Practice Act, R.C. Chapter 4723, and specifically R.C. 4723.28(B)(4).<sup>1</sup>

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<sup>1</sup> R.C. 4723.28(B)(4) gives the Board the power to revoke or suspend a nursing license for "[c]onviction of \* \* \* any felony."

On December 20, 2005, the Board and Breckenridge entered into an Interim Agreement in which Breckenridge agreed to put her license on inactive status until her disciplinary matter was fully resolved. At her request, Breckenridge received a number of continuances for a disciplinary hearing.

{¶2} The administrative hearing eventually went forward on March 3, 2008. Following a July 7, 2008 report and recommendation by the hearing examiner that Breckenridge's nursing license be revoked, the Board modified the recommended penalty and imposed an indefinite suspension of at least three years. In its September 30, 2008 adjudication order, the terms of the suspension were to begin on the date the adjudication order was mailed, and impliedly not on the date that Breckenridge placed her license on inactive status in 2005. Breckenridge timely appealed to the Franklin County Court of Common Pleas.

{¶3} The court of common pleas affirmed the order of the Board, and dismissed the appeal on January 27, 2009. The decision and entry contained the following language on the last page: "Counsel for the appellee **SHALL** prepare and submit the entry required by Loc.R. 25. (Emphasis sic.)

{¶4} On February 24, 2009, Breckenridge, proceeding pro se, filed a motion to reopen the appeal. She challenged the constitutionality of R.C. Chapter 119 and alleged that she was subject to a "kangaroo court." The common pleas court denied the motion on December 1, 2009. The entry also confirmed its earlier affirmation of the adjudication order and dismissed the appeal with the notation, "**THIS IS A FINAL AND APPEALABLE ORDER.**"

{¶5} Breckenridge did not appeal to this court from either the January 27, 2009 decision and entry or the December 1, 2009 decision and entry. Instead, she filed another motion for reconsideration with the common pleas court on December 30, 2009. The common pleas court, noting that such a motion is a nullity, denied the motion on January 5, 2010.

{¶6} Breckenridge filed a notice of appeal to this court from the January 5, 2010 decision and entry. She has also filed a motion for judicial notice and a motion for equitable estoppel. The Board has filed a motion to dismiss the appeal. We begin our analysis with the motion to dismiss this appeal.

{¶7} This court has jurisdiction over final orders of the court of common pleas. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2501.02. The final appealable order in this case was journalized on January 27, 2009. Breckenridge's option at that time was to file an appeal with this court within the time limits contained in App.R. 4. She did not; instead, she filed what the Supreme Court of Ohio has deemed a nullity. "The Ohio Rules of Civil Procedure do not prescribe motions for reconsideration after a final judgment in the trial court." *Pitts v. Dept. of Transp.* (1981), 67 Ohio St.2d 378, paragraph one of the syllabus. Such motions are a nullity. *Id.* at 379. See also *VFW Post 1238 v. Liquor Control Comm.* (1997), 78 Ohio St.3d 1482 (citing *Pitts* as basis for dismissing appeal for lack of jurisdiction).

{¶8} The Eleventh Appellate District has ruled that because a court of common pleas acts as a court of appeals from administrative orders, a motion for reconsideration may be entertained pursuant to App.R. 26. *Miller v. Sts. Peter and Paul School*, (1988),

126 Ohio App.3d 762, 764. However, we conclude that we remain bound by the Supreme Court of Ohio's determination in *Pitts*, which was itself an appeal from an administrative agency. "The *Pitts* court made no exception for reconsideration in administrative appeals where the trial court acts as an appellate court." *Luna v. Ohio Dept. of Job and Family Servs.*, 6th Dist. No. L-02-1146, 2002-Ohio-6359, ¶6. See also *Cleveland Bd. of Zoning Appeals v. Abrams*, 8th Dist. No. 93180, 2010-Ohio-1058 (listing cases).

{¶9} Even if the trial court could have considered Breckenridge's motion for reconsideration, under the Ohio Rules of Appellate Procedure, her motion was untimely. App.R. 26(A) (application for reconsideration must be filed ten days after judgment of the court). Breckenridge filed her motion for reconsideration on December 30, 2009, and the common pleas court's decision and entry was filed on December 1, 2009.

{¶10} Based on the foregoing, we dismiss the appeal for lack of jurisdiction.

*Appeal dismissed.*

BROWN and CONNOR, JJ., concur.

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